

Town of Derry Charter Commission  
Preliminary Report.

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November 6, 1995

To the Board of the City of Derry:

The Preliminary Report of the Derry Charter Commission that was elected on May 23, 1995. Since then, the Charter Commission was charged with reviewing the Town's Charter and recommending necessary revisions. The Preliminary Report contains the text of a City Charter that the Commission intends to be submitted to vote of the Town at the regular Town Meeting in March 1996, subject to further comments received from the public. The Preliminary Report Draft will also be presented to State officials for review, in accordance with State law.

## DERRY CHARTER COMMISSION

### *PRELIMINARY REPORT*

We sincerely appreciate the public's participation in our hearings and meetings. The revised Charter contained in this Report incorporates many of the suggestions made to us and in our judgment will provide Derry with a clear and workable form of government suited to Derry's needs. We look forward to preparing our Final Report after reviewing all comments, and in presenting our Final Report Draft to the voters at the Town Meeting in March 1996.

William Zolla, Chairman  
Paul Hopfgarten, Vice Chairman  
Roy Feinauer, Secretary  
Grant Benson, Jr.  
John Dowd  
Michael Gill  
Sandra Hopfgarten  
James Lupien  
Fred Tompkins







(PRELIMINARY REPORT DRAFT)

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William Zolla, Chairman  
Derry Charter Commission

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## DERRY CHARTER

### PURPOSE

The purpose of this Charter is to exercise the home rule power recognized under Part One, Article 39 of the Constitution of the State of New Hampshire, consistent with the general laws of the State.

### ARTICLE 1

#### INCORPORATION; CITY

##### SECTION 1.1 Incorporation

The inhabitants of Derry shall continue to be a body politic and corporate under the name of the "City of Derry" and as such to enjoy all the rights, immunities, powers and privileges and be subject to all the duties and liabilities now appertaining to or incumbent upon them as a municipal corporation. All existing debts and obligations shall remain obligatory upon the City under this Charter.

##### SECTION 1.2 City Form of Government; Council-Manager Plan

The inhabitants of Derry hereby adopt this City Charter, intending that their municipal government shall exercise all powers of cities as authorized by State law and this Charter, under the Council-Manager Plan.



### SECTION 1.3 Construction

The powers conferred under this Charter are to be construed liberally in favor of the City, and the specific mention of particular powers is not intended to limit in any way the general powers of the City as stated in Section 1.1.

### SECTION 1.4 Intergovernmental Relations

Subject only to express limitations in the provisions of the New Hampshire Statutes, the City may exercise any of its powers or perform any of its functions under this Charter and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of New Hampshire or any political subdivision or agency thereof, or the United States of America or any agency thereof.

### SECTION 1.5 Single Ward; Councilor Districts

(A) The City shall comprise a single Ward, and, except as herein otherwise provided, the general laws relative to wards of cities, officers thereof, voters, checklists, elections and jurors therein shall be applicable to such Ward.,

(B) For the purpose of electing City Councilors, the City shall be divided into four Districts. The boundaries of the presently-established Districts shall remain as drawn until boundaries are redrawn by the City Council based on the decennial Census of the United States. So far as reasonably fair and practicable, all Districts shall be equal in population. The City Council shall, if necessary, adjust and establish new boundaries based on decennial Census data. The City Council may establish its own rules and procedures governing the conduct of redistricting.



However, the City Council shall hold at least one public hearing concerning new District boundaries.

## ARTICLE 2

### ELECTIONS; ELECTION OFFICERS; CONDUCT OF ELECTIONS

#### SECTION 2.1 Composition of Board of Election Officers

The Supervisors of the Checklist, the Ward Moderator and the Ward Clerk shall constitute the Board of Election Officers. The Ward Moderator shall be the Chair. The Ward Clerk shall serve as the Clerk of the Board.

#### SECTION 2.2 Moderator

There shall be a Ward Moderator who shall have all the powers and duties granted by this Charter and State law. The Moderator shall be elected at large at the regular City election for a term of 2 years. The Moderator shall have the power to appoint all election officials except those which this Charter or State law requires to be elected or otherwise appointed. The Moderator shall determine whether all ballots from all polling places are to be counted in one or more locations. Vacancies in the office of Moderator shall be filled pursuant to State law.

#### SECTION 2.3 Supervisors of the Checklist

(A) There shall be 3 Supervisors of the Checklist who shall hold office for 6 years (and until their successors are elected and qualified), elected on a staggered basis so that one Supervisor is elected every two years.



(B) Vacancies among the Supervisors of the Checklist shall be filled pursuant to State law. The person so appointed shall hold office until the vacancy for the unexpired term is filled at the next regular City election.

(C) The Supervisors of the Checklist shall elect a chair for a term of 2 years.

#### SECTION 2.4 Duties of the Supervisors of the Checklist

The Supervisors of the Checklist shall have such powers and duties as are specified under State law, and shall further perform all duties pertaining to the office of ward selectmen, and for all purposes requiring such officers, shall be deemed selectmen of the ward. The office of ward selectman is hereby abolished.

#### SECTION 2.5 Conduct of Elections

(A) The election officers, whose duty it is to conduct regular and special elections, shall conduct City elections in accordance with State law. All elected City officers shall be elected by use of the non-partisan ballot system established by State law.

(B) The regular City election shall be held annually on the Tuesday immediately following the second Monday in November. The City Council shall by ordinance establish other election dates, polling places and balloting hours.

(C) Persons who would be qualified under State law to vote in a biennial election in the City if held on the day of a City election, shall be qualified to vote in the City election.

(D) The filing period for candidates to be placed on the ballot for City elections shall be 10 days, beginning on the seventh Wednesday before the City election. A filing fee of one dollar



will be charged unless a candidate files petitions complying with State law and requesting that the candidate's name be printed on the ballot.

#### SECTION 2.6 Preparation of Ballots

The Ward Clerk shall prepare separate ballots to be used at all local referenda and at elections at which City officers are chosen. The ballots shall contain in appropriate sections the names of all candidates in such order as permitted by State law, without party designation. Below the list of names of the candidates of each office, there shall be as many blank spaces as there are offices to be filled at the election. No titles, military, professional or otherwise, shall accompany the name of any candidate on the ballot. The names and residence of candidates for the same office shall be printed on the ballot in the order in which they are drawn by lot by the Ward Clerk, whose duty it shall be to make such drawing and to give each candidate an opportunity to be present, thereat, personally or by one representative.

#### SECTION 2.7 Preservation of Ballots

All the ballots cast at each election shall be preserved, maintained, and sealed as required by State law.

#### SECTION 2.8 Contested Elections

(A) Any person for whom a vote was cast and recorded for any office at a city election may, before the expiration of 3 days after the date of the election, apply in writing to the Ward Clerk for a recount of the ballots cast for such office and shall pay to the Ward Clerk the fee



authorized by State law, for the use of the City. The Ward Clerk shall appoint a time for the recount not earlier than 5 days and not later than 10 days after the receipt of the application. If a recount is requested for a City office, no person shall assume that office until the recount is completed.

(B) The recount shall be conducted by the Board of Election Officers acting as a Board of Recount, in compliance with State law. The Board shall determine the results of any recount. Decisions of the Board in cases of contested elections shall be final.

(C) Tied elections for any elected City office shall be determined by lot in a manner decided by the Ward Clerk in the presence of the candidates who are tied, if upon notice from the Clerk they elect to be present.

(D) If any 10 voters of the City shall, before the expiration of 7 days after the date of the regular City election or special election, apply in writing to the Ward Clerk for a recount of the votes on any ballot question affecting the City only, the Clerk shall appoint a time and place for the recount, not earlier than 5 days nor later than 10 days after receipt of the application. The recount shall be conducted in accordance with State law. Applicants shall pay to the Ward Clerk, for use of the City, the appropriate fee as established by State law.

## SECTION 2.9 Certification of Election and Appointment

(A) Written notice of election or appointment to any City office or board shall be mailed by the City Clerk to the person elected or appointed, within 48 hours after the appointment is made or the results of any vote are certified to the City Council by the Board of Election Officers. If, within 10 days from the date of the notice, such person shall not take, subscribe to and file



with the City Clerk an oath of office, such neglect shall be deemed a refusal to serve and the office shall be deemed vacant, unless the City Council shall extend the time in which such person may qualify.

(B) The removal from office in accordance with this Charter, with or without cause, of a person elected or appointed or otherwise chosen for a fixed term, shall give no right of action for breach of contract.

(C) Except as otherwise provided by law, before entering upon the duties of office, every person elected or appointed to City office shall take and subscribe to an oath of office as prescribed by law, which shall be filed and kept in the office of the City Clerk. Any oath required by this section may be administered by any officer qualified by law to administer oaths.

(D) All elected City officials shall take office on the first working day of January following their election and shall hold office until their successors are duly elected and qualified.

### ARTICLE 3

#### PETITIONS: FREE, INITIATIVE, REFERENDUM

##### SECTION 3.1 Free Petition

(A) Individual Petitions, Action Discretionary. The City Council shall receive all petitions which are addressed to them and signed by a registered voter and may, in their discretion, take such action in regard to such petitions as they deem necessary and appropriate.

(B) Group Petitions, Action Required. The City Council shall hold a public hearing and act by taking a vote on the merits of every petition which is addressed to it and which is signed by



at least 25 registered voters. The hearing shall be held by the City Council, or by a committee or subcommittee thereof, and the action by the City Council shall be taken not later than 60 days after the petition is filed with the City Clerk. Hearings on two or more petitions filed under this section may be held at the same time and place. The City Clerk shall mail notice of the hearing to 10 petitioners whose names first appear on each petition at least 7 days before the hearing. Notice shall be given by publication of a summary of the contents of a petition at least 7 days prior to all such hearings, at public expense. No hearing shall be held upon more than one petition containing the same subject matter in any 12-month period. No hearing or action by the City Council under this section shall be required in the case of any petition to suspend the implementation of an ordinance, adopting a budget, or enacting a land use regulation.

### SECTION 3.2 Initiative Petition

(A) Commencement of Proceedings. Initiative procedures shall be started by the filing of an initiative petition with the City Clerk. The petition shall be addressed to the City Council, shall contain a request for passage of a particular measure set forth in the petition, and shall be signed by no less than 20 percent of the total number of votes cast in the last regular City election. Signatures to an initiative petition need not be all in one paper. All such papers pertaining to any one measure shall be fastened together and shall be filed in the office of the City Clerk as one instrument, with the endorsement thereon of the names and addresses of the persons designated as filing the same. With each signature to the petition shall be stated the place of residence of the signer, giving the street and number, if any.



Within 7 days after the filing of an initiative petition, the City Clerk shall ascertain by what number of registered voters the petition is signed, and what percentage that number is of the total number of votes cast in the last regular City election, and shall attach thereto a certificate showing the result of such examination.

The City Clerk shall forthwith transmit the certificate with the petition to the City Council and at the same time shall send a copy of the certificate to the first person designated on the petition as filing the same.

When such certificate establishes that the petition appears to have been signed by the requisite number of registered voters, the petition shall be deemed to contain requisite signatures unless written objections are made with regard to the signatures thereon by a registered voter within 7 days after such certificate has been issued, by filing such objections with the City Council and a copy thereof with the City Clerk. The validity of any such objection shall be determined by the City Council at their next regular meeting.

(B) Requirements for Passage and Submission to Electorate. If the City Council determines that the petition contains the requisite signatures of registered voters, and if in the opinion of the City attorney the petitioned initiative measure may lawfully be passed by the City Council, the City Council shall within 20 days after the petition has been finally determined to be sufficient: (1) pass the measure without alteration; or, (2) schedule a special City election to be held on a date not less than 30 nor more than 60 days thereafter, and submit the measure without alteration to a vote at that election. However, if any other City election is to occur within 60 days after the petition has finally been determined to be sufficient, the City Council may omit a special election and submit the measure to a vote at such other City election.



The ballot presenting an initiative measure shall state the nature of the measure in terms sufficient to communicate the substance thereof. The question shall be whether the initiative measure should be adopted.

### SECTION 3.3 Referendum Petitions

(A) Commencement of Proceedings. As to measures which may be subject to referendum under State law and this Charter, referendum petitions must be filed with the City Clerk within thirty days after adoption by the City Council of the measure or part thereof protested by the petition. Referendum petitions shall identify specifically the measure or part thereof protested and must be signed by no less than 20 percent of the total number of votes cast in the last regular City election. The procedures of Section 3.2 (A) shall apply to referendum petitions except that the words "measure or part thereof protested" shall, for this purpose, replace the word "measure" in the said section whenever it may occur, and the word "referendum" shall replace the word "initiative" in said section.

(B) Suspension of Effect of Measure or Part Thereof Protested. When a referendum petition is filed with the City Clerk, the measure or part thereof protested shall be suspended from taking effect, except for emergency ordinances adopted under Section 6.3 of this Charter or ordinances adopting a budget or land use regulation, which shall not be subject to suspension. Such suspension shall terminate when:

1. There is a final determination of insufficiency of the petition; or
2. 30 days have elapsed after a vote of the City on the measure or part thereof protested.



(C) Action on Petition. When a referendum petition has been finally determined to be sufficient, the City Council shall reconsider the protested measure or part thereof by voting whether to repeal it. If the City Council fails to repeal the protested measure or part thereof within 30 days after the day the petition was finally declared sufficient, the City Council shall submit the protested measure or part thereof to a vote of the City at a special City election to be held on a date fixed by the City Council. Such special election shall be held not less than 30 nor more than 60 days after the City Council's vote on repeal. However, if any other City election is to occur within 60 days after the City Council's vote on repeal, the City Council's may omit a special election and submit the protested measure or part thereof to a vote at such other City election.

The ballot presenting a referendum measure under this section shall state the nature of the protested measure or part thereof in terms sufficient to communicate its substance. The question shall be whether the referendum measure should be repealed.

#### SECTION 3.4 Submission of Proposed Measure to Voters.

The City Council may, on its own motion, submit any proposed measure, or a proposition for the repeal or amendment of any measure, to a vote of the City at a regular or special City election in the same manner and with the same force and effect as provided by this Charter for submission of initiative or referendum measures.



## SECTION 3.5 Measures with Conflicting Provisions.

If two or more initiative or proposed measures passed at the same City election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

## ARTICLE 4

### JUDICIAL AND ADMINISTRATIVE BOARDS

#### SECTION 4.1 Boards of Trustees

(A) Derry Public Library Trustees. There shall be a board of 7 Trustees of the Derry Public Library who shall be elected at the regular City election for terms of 3 years, staggered so that no more than 3 Trustees are elected at one time. Vacancies shall be filled by appointment by the City Council for the unexpired term.

(B) Taylor Library Trustees. There shall be a board of 5 Trustees of the Taylor Library who shall be elected at the regular City election for terms of 3 years, staggered so that no more than 2 Trustees are elected at one time. Vacancies shall be filled by appointment by the City Council for the unexpired term.

(C) Trustees of Trust Funds. There shall be a board of 3 Trustees of Trust Funds whose powers and duties are provided by State law. Trustees of Trust Funds shall be appointed by the City Council for a term of 3 years, one Trustee to be appointed each year. Vacancies shall be filled by appointment by the City Council for the unexpired term. An annual report of the Trustees of Trust Funds shall be submitted to the City Council within 30 days following the close of each fiscal year.



## SECTION 4.2 Administrative Boards.

(A) Planning Board. There shall be a Planning Board, whose powers and duties are provided by State law. The Planning Board shall consist of 9 members, of whom 6 are appointed and 3 are ex officio. The 6 appointed members shall be appointed by the City Council for terms of 3 years, except that initial appointments shall be staggered so that no more than 2 appointed members shall have terms that expire in a single year; a vacancy occurring before the end of a term shall be filled for the unexpired term. The 3 ex officio members shall consist of the City Manager or the Manager's designee, an administrative officer of the City designated by the Manager, and a City Councilor designated by the City Council for a one year term. There shall also be 3 alternate appointed members appointed in the same way as regular appointed members, except no more than one alternate appointed member's term shall expire in a single year.

(B) Housing and Redevelopment Authority. There shall be a Housing and Redevelopment Authority whose powers and duties are provided by State law. The Authority shall consist of 5 members appointed by the City Council for terms of 5 years, except that initial appointments shall be staggered so that no more than one member's term shall expire in a single year. Vacancies shall be filled for the unexpired term.

(C) Conservation Commission. There shall be a Conservation Commission whose powers and duties are provided by State law. The Commission shall consist of 5 members appointed by the City Council for terms of 3 years, except that initial terms shall be staggered so that no more than 2 members shall have terms that expire in a single year. Vacancies shall be filled for the unexpired term. 3 alternate members shall be appointed in like manner, except that no more than one alternate member's term shall expire in a single year.



### SECTION 4.3 Judicial Boards

#### Zoning Board of Adjustment.

There shall be a Zoning Board of Adjustment whose powers and duties are provided by State law. The Board shall consist of 5 regular members appointed by the City Council for 3 year terms, except that initial appointments shall be staggered so that no more than 2 members shall have terms that expire in a single year. In addition, there shall be 5 alternate members, appointed in the same way as regular members, except that no more than two alternate members' terms shall expire in a single year, and the terms of alternate members shall be 3 years. Vacancies shall be filled for the unexpired term.

### SECTION 4.4 Certain Vacancies

(A) Unless otherwise provided in this Charter, in the event of a vacancy in an elected office, the City Council shall fill the vacancy by appointment until the next regular City election, at which time the vacancy shall be filled by election for the remainder of the unexpired term..

(B) Unless otherwise provided in this Charter, vacancies of regular members of appointed boards, commissions or committees shall, be filled by available alternate members selected by City Council for the unexpired term.

(C) Appointments made by the City Council under this Article shall be by majority vote of the entire council.



#### SECTION 4.5 Other Administrative Committees

Other administrative boards and committees may be established as necessary by the City Council.

#### SECTION 4.6 Board Membership Restriction

No member or alternate member, except *ex officio* members, of any appointed or elected board of the City shall serve on any other appointed or elected board of the City.

#### SECTION 4.7 Meetings with City Council and City Manager

The City Council and the City Manager shall meet during the month of July, and more often if City affairs so warrant, with the Chair of all standing city committees and boards to review significant actions taken by the committees, projects currently under discussion, and anticipated activity for the coming year.

### ARTICLE 5

#### THE GOVERNING AND LEGISLATIVE BODY

##### Section 5.1 The City Council

Except as otherwise provided by this Charter, the governing and legislative body of the City shall be a City Council exercising all powers authorized by State law. The City Council consists of nine Councilors: four District Councilors, four District Councilors-at-large and one Councilor-at-large. One District Councilor shall be elected by the voters of each Councilor District and shall be a resident in the District from which elected. District Councilors-at-large



shall be equally apportioned, by residence, among the four Councilor Districts and shall be elected by the voters of the City at large. The Councilor-at-large shall be a resident of any Councilor District and shall be elected by the voters of the City at large.

## Section 5.2 Terms of Office

The term of office for members of the City Council shall be for two years, or until the election and qualification of their successors.

## Section 5.3 Qualification for Office as City Councilor

To be eligible for election to the office of City Councilor, a candidate must be 18 years of age, be a resident of the City for at least one calendar year before the election, and in the case of a District Councilor or District Councilor-at-large, be a resident of the District to be represented.

If a Councilor or any elected official of the City moves from the City, or from the District in the case of a District Councilor or District Councilor-at-large, and establishes a domicile in some other place, the office shall be declared vacant and shall be filled as provided for by this Charter. Changes in a District boundary during the term of a District Councilor or District Councilor-at-large shall not create a vacancy.

## SECTION 5.4 Selection of Mayor and Vice Mayor

The Council shall, by the affirmative vote of a majority of all its members, at its first regular meeting in January, choose one of its members as Mayor for a term of one year. The Council shall choose one of its members as Vice Mayor, for a term of one year, who shall act in the



absence or disability of the Mayor. In the event of a vacancy occurring in the office of Mayor, the Council shall choose one of its members as Mayor at the next regular meeting to serve for the unexpired term. The Mayor shall be the official head of the City for all ceremonial purposes, shall preside at all meetings of the Council and may speak and vote at such meetings.

#### SECTION 5.5 Election of Councilors

City Councilors shall be elected for terms for two years, on the following schedule: in even-numbered years, the District Councilors and the Councilor-at-large shall be elected; in odd-numbered years, the District Councilors-at-large shall be elected.

#### SECTION 5.6 Removal of Councilors

The City Council may, on specific charges and after due notice and hearing, at any time remove one of its own members for cause, including but not limited to prolonged absence from or other inattention to duties, crime or misconduct in office, or as specified in this Charter.

#### SECTION 5.7 Filling of City Council Vacancies

In case a vacancy occurs in the City Council for any reason, the remaining City Councilors shall appoint a person qualified by residence to fill the vacancy until the next regular City election, at which point the vacancy shall be filled by election for the remainder of the unexpired term. The City Council shall appoint the person who received the second highest number of votes in the immediately preceding election for the position in which the vacancy occurs, if such person remains qualified and willing to serve.

The City Council shall act to fill a vacancy no later than 21 days after the vacancy has been officially declared. If such action is not taken within 21 days, the appointment shall be made by the Mayor. The person so appointed shall be sworn and commence to serve forthwith.

#### SECTION 5.8 Compensation; Expenses

The City Council shall establish an annual salary and expense allowance for its members, subject to the following: No increase in such salary or expense allowance shall be effective unless it shall have been adopted by a two-thirds vote of all the members of the City Council. The new salary and expense schedule shall be included in next City budget process, and shall take effect in the fiscal period to which that budget applies. No Councilor in office at the time the new schedule is adopted shall receive any benefit of the new schedule during the remainder of the Councilor's then-current term of office.

#### SECTION 5.9 Rules; Meetings; Quorum

(A) The City Council shall from time to time establish rules for its proceedings. Regular meetings of the City Council shall be held at a time and place fixed by the Council but which shall be not less frequent than once monthly. Special meetings of the City Council may be held on the call of the City Manager, the Mayor, or on the call of any three or more Councilors, by written notice delivered to the place of residence or business of each Councilor at least 48 hours in advance of the time set. Sessions of the City Council shall be open to the public, in accordance with RSA 91-A. Every matter coming before the City Council for action shall be put to a vote, the result of which shall be duly recorded.



(B) Two-thirds of all the members of the City Council shall constitute a quorum. The affirmative vote of a majority of all the members of the City Council shall be necessary to adopt any appropriation. Except as otherwise provided by law or this Charter, any other action or measure may be adopted by a majority vote of those present.

#### SECTION 5.10 Council Staff

The clerk of the City Council shall be the City Clerk. The Clerk of the City Council or designee shall give notice of all meetings of the City Council to its members and to the public, shall keep a record of its proceedings and shall perform such duties as may be assigned by the Charter, by ordinance, or by other vote of the City Council.

#### SECTION 5.11 City Councilors - Incompatible Offices.

Except as otherwise provided in this Charter, members of the City Council shall not hold any other office or employment with the City. Former members of the City Council shall not be eligible for appointment as a compensated City officer or employee until one year after the expiration of their service.

### ARTICLE 6

#### ORDINANCES

##### SECTION 6.1 Municipal Legislation

Municipal legislation shall be by ordinance. Each ordinance shall be identified by a number and a short title. The enacting clause of each ordinance shall be "The City of Derry Ordains," and

the effective date of each ordinance shall be specified in it. All ordinances shall be recorded at length uniformly and permanently by the clerk of the City Council, and each ordinance so recorded shall be authenticated by the signature of the Mayor and the Clerk of the City Council.

## SECTION 6.2 Ordinances

(A) An ordinance may be introduced by any Councilor at any regular or special meeting of the City Council, provided notice of such intended introduction appears on the agenda. Upon introduction of any ordinance, the Clerk of the City Council shall distribute a copy to each Councilor and to the City Administrator, shall file a reasonable number of copies in the office of the City Clerk and shall post a copy in such other public places as the Council may designate. The full text of the proposed measure or ordinance need not be included in the notice if an adequate statement is included, describing the proposal and designating the place where the proposal is on file for public inspection.

(B) Every proposed ordinance shall be introduced in writing in the form required for final adoption. Any ordinance which repeals or amends an existing ordinance shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type, and shall indicate new matter by underscoring or by italics.

(C) After the ordinance's first reading, it shall be published in a newspaper of general circulation in the City at least once, together with a notice of the time and place when and where it will be given a public hearing and be considered for final passage.



(D) No ordinance shall be passed finally on the date on which it is introduced, except in cases of emergency involving the health or safety of the people or their property. Every adopted ordinance, except as otherwise provided by this Charter, shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

No ordinance shall be amended or repealed except by another ordinance adopted in accordance with this Charter, or as provided in the initiative and referendum procedures of this Charter.

(E) The City Council shall enact an Administrative Code within three months after presentation by the City Manager in accordance with Section 8.9.

### SECTION 6.3 Emergency Ordinances

An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally. A preamble which declares and defines the emergency shall be separately voted on and shall require the affirmative vote of two-thirds of all the members of City Council.

Action on an emergency ordinance shall be taken without amendment at the meeting at which the ordinance is introduced. No ordinance making a grant, renewal or extension, whatever its kind or nature, of any franchise or special privilege shall be passed as an emergency ordinance and except as provided by law relating to utility lines, no such grant, renewal or extension shall be made otherwise than by the regular procedure established for ordinances. After its adoption, an emergency ordinance shall be published as prescribed for other adopted ordinances. It shall become effective upon adoption or at such time as it may specify.

#### SECTION 6.4 Codification of Ordinances

Not later than 18 months after taking office under this Charter and at least every fifth year thereafter, the City Council shall have prepared a revision or codification of the ordinances of the City which are appropriate for continuation as local laws of the City.

#### SECTION 6.5 Existing Ordinances

All by-laws, ordinances, rules, restrictions and regulations of the City of Derry which are in effect as of the effective date of this Charter, and are not inconsistent with this Charter, shall remain in effect after the adoption of this Charter until they expire by their terms or are repealed, modified or amended by the Council.

#### SECTION 6.6 Charter Objection

On the first occasion that the question on adoption of a measure is put to the City Council, if a single Councilor objects to the taking of the vote, the vote shall be postponed until the next meeting of the City Council whether regular or special. If 2 or more other Councilors shall join in the objection, such postponement shall be until the next regular meeting. This procedure shall not be used more than once for any agenda item. Any item once postponed shall not be further postponed under this section. The Charter objection privilege is not available with respect to an emergency ordinance.



## ARTICLE 7

### GENERAL POWERS

#### SECTION 7.1 General Powers of the City Council

(A) Subject to the provisions of this Charter, as the elected body serving as the legislative and governing body of the City, the City Council shall exercise all the powers and duties of selectmen, city councils and boards of aldermen and such other powers and duties provided by State statute or the Constitution of the State of New Hampshire.

(B) Without limiting the generality of the preceding subsection, the City Council shall also exercise the powers conferred by law on annual or special meetings of the Derry Cooperative School District to determine and appropriate the total amount of money to be spent by the School District, as well as authority conferred by law on legislative bodies of school districts to approve cost items associated with collective bargaining agreements. The power to elect members of the Derry Cooperative School District Board of Education and the power to determine the size of the School District Board in accordance with law shall be exercised by the qualified voters of Derry. Except as specifically provided herein, the administration of all fiscal and prudential affairs of the School District, the direction of School District policy, the general management and control of District schools and properties, line item control over the School District budget and all other powers prescribed by law in relation to School District matters shall remain vested in the School District Board. The district meeting of the Derry Cooperative School District is hereby abolished.

(C) Except as otherwise provided by State law or this Charter, the powers of the City Council may be exercised in a manner determined by it.

## SECTION 7.2 Regulation of Fees and Other Charges

In accordance with State law, the Administrative Code and this Charter, the City Council shall approve and regulate all fees and charges, whether for reclamation, impact, use, permits or any other charges that may be made by any department or agency, for the use of the facilities or services of the City.

## SECTION 7.3 Delegation of Powers

The City Council may delegate to one or more City agencies the powers to grant and issue licenses and permits vested in the City Council by State law, and may regulate the granting and issuing of licenses and permits by any such City agency. The City Council may in its discretion, rescind any such delegation without prejudice to any prior action taken on such licenses or permits.

## SECTION 7.4 Inquiries and Investigations

The City Council may require any elected or appointed City officer or employee, any official appointed or confirmed by the Council, or any member of an elected City board or elected City commission to appear before it and to give such information as the City Council may require in relation to such person's office, function or performance. The City Council shall give at least 48 hours written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section.



The City Council may make investigations into the affairs of the City and into the conduct of any City agency, and for this purpose may administer oaths and require the production of evidence.

## ARTICLE 8

### ADMINISTRATION OF GOVERNMENT

#### SECTION 8.1 City Manager

The chief administrative officer of the City shall be the City Manager (hereinafter called the "Manager"). The Manager shall be appointed by the City Council upon the affirmative vote of at least 6 members of the Council. The Manager shall hold office at the pleasure of the City Council. The City Council shall fix the Manager's salary and terms of employment.

#### SECTION 8.2 Qualifications

The Manager shall be appointed solely on the basis of qualification for the office, with special reference to education, training and previous experience in public or private office. The Manager need not be a resident of the Town or of the State of New Hampshire at the time of appointment. The Manager shall devote full time to the office and shall not hold any other public office nor engage in any other business or occupation unless with the approval of two-thirds of the entire City Council.

### SECTION 8.3 Evaluation of Manager's Performance

During the budgetary process following the first anniversary of the Manager's service to the City and during each subsequent budgetary process, the City Council shall conduct an evaluation of the Manager's performance in office. After such evaluation, the City Council shall determine whether the Manager's overall performance in office has been satisfactory or unsatisfactory. The City Council shall also establish the Manager's compensation for the ensuing year.

### SECTION 8.4 Removal of Manager

(A) The Manager may be removed by a majority vote of all members of the City Council as herein provided. The City Council shall adopt a resolution stating its intention to remove the Manager and the reasons therefor, a copy of which shall be served on the Manager. Immediately upon delivery to the Manager of the resolution stating the intent of the City Council, the Manager shall be relieved of office and all further duties.

(B) The Manager may reply thereto in writing within 10 days, and upon request, shall be afforded a hearing, public or non-public at the Manager's option, which shall occur not earlier than 10 days nor later than 15 days after such hearing is requested. After the hearing, if one is requested, and after full consideration, the City Council, by majority vote of all its members, may adopt a final resolution of removal. The Manager shall continue to receive full salary until the final resolution of removal which shall be acted upon no later than 7 days following the hearing. The action of the City Council in removing the Manager shall be final.

During the period between adoption of a resolution under Paragraph (A) of this section and final action under Paragraph (B), the City Council shall, by majority vote of all its members, appoint



an interim Manager to serve at the will of the City Council for not more than 90 days. If a final resolution of removal is not adopted, the Manager shall resume office forthwith.

#### SECTION 8.5 Acting City Manager

(A) Whenever by reason of sickness, absence from the city or other unexpected cause, the City Manager shall be unable to perform the duties of the office for a period of 3 successive working days or more, the City Council shall appoint an Acting City Manager to serve for no more than a total of 180 days, which period shall not be renewed or extended for any person or series of persons.

(B) The Acting Manager shall have all the powers and perform all the duties of the Manager except to the extent that said powers and duties may be specifically restricted by City Council resolution. The Acting Manager shall be paid such salary for services hereunder as may be prescribed by the City Council.

#### SECTION 8.6 Powers and Duties of Manager

(A) The Manager shall be the chief administrative officer of the City, shall supervise and be responsible for the administrative and financial affairs of the City and shall carry out the policies enacted by the Council. The Manager shall be charged with the preservation of the health, safety, and welfare of persons and property and shall see to the enforcement of the ordinances of the City, this Charter and general State laws governing administration of the City. The Manager shall supervise and direct the administration of all City departments and personnel therein.

(B) Except as otherwise provided by this Charter, the Manager shall appoint upon merit and fitness alone, and may remove all officers and employees of the City, subject to the provisions of pertinent statutes and the Administrative Code. Appointment of officers and employees who report directly to the City Manager shall be subject to confirmation by majority vote of the City Council.

(C) The Manager shall fix the compensation of all City officers and employees appointed by the Manager, within the limits established by existing appropriations.

(D) The Manager shall have full jurisdiction over the rental and use of all City facilities under the Manager's control. The Manager shall be responsible for the maintenance and repair of all City property under the Manager's control, within the limits of existing appropriation.

(E) The Manager shall keep a full and complete inventory of all property of the City, both real and personal.

(F) The Manager shall be responsible for purchasing all supplies, material and equipment for all departments and activities of the City.

(G) The Manager shall keep the City Council informed of the needs of the City, and make such reports and recommendations as the Manager may deem advisable or as the Council, as provided by this Charter or by ordinance, shall direct.

(H) The Manager shall have and perform such other powers and duties not inconsistent with the provisions of this Charter as now are, or may be, conferred or imposed upon the Manager by ordinance, or by general State laws. The Manager shall have the right to take part in the discussion of all matters before the City Council, but not the right to vote.



(I) The Manager shall have no authority with respect to the affairs of the Derry Cooperative School District, other than to direct that at the time specified in accordance with Section 9.2, the detail of expenditures proposed by the School District shall be presented to the Manager for inclusion in the proposed budget to be submitted to the City Council.

#### SECTION 8.7 Non-interference by Individual Members of the City Council

The City Council shall act in all matters as a body. Members of the Council shall not seek individually to influence the official acts of the City Manager, or any other officers; or to direct or request, except in writing, the appointment of any person to, or removal from, office; or to interfere in any way with the performance by such officers of their duties. Any member of the City Council violating the provisions of this section, as determined through procedures established in this Charter, shall forfeit the office.

#### SECTION 8.8 Appointive Officers

(A) There shall be appointed by the Manager, subject to confirmation by majority vote of the entire City Council, a city clerk (who shall also perform the duties of ward clerk as established by State law), a police chief, a fire chief, a health officer, one or more assessors, a city attorney, a tax collector and such other officers as may be necessary to administer all departments which this Charter and the City Council shall establish. Assessors shall, prior to appointment, have demonstrated knowledge of property appraisal or assessment and of the laws governing the assessment and collection of property taxes. The powers and duties of appointed

officers and heads of departments shall be those prescribed by State law, by the Charter or by ordinance.

(B) The City Council may engage as needed such other attorneys as are deemed in the best interest of the City or to provide legal advice to the City Council.

#### SECTION 8.9 Departments; Administrative Code

The City shall have departments, divisions, boards or committees as may be established by this Charter or as the City Council may establish by ordinance. It shall be the duty of the first Manager to take office after the effective date of this Charter to draft and to submit to the City Council within 9 months after assuming office, an ordinance consistent with this Charter to be titled as the "Administrative Code", which provides for the division of the administrative service of the City into departments or agencies and defines the functions and duties of each.

The ordinance shall include, subject to any collective bargaining agreements that may be agreed upon, provisions for a merit plan to ensure that all appointments and promotions in the service of the City shall be made solely on the basis of merit and only after appropriate examination or review of the applicants' relative knowledge, skills, abilities and experience and provisions governing discipline and dismissal of personnel. Subsequent to the adoption of such ordinance, upon recommendation of the Manager, the City Council by ordinance may amend it to create, consolidate or abolish departments, agencies or other divisions of the City, define the functions and duties of each, or otherwise amend it.

The chief officer of each department shall have supervision and control of such department and shall have the power to prescribe rules and regulations for the conduct of such department, not



inconsistent with general law, this Charter, the Administrative Code, and the provisions of the merit plan. Prior to adoption of the Administrative Code, the Manager shall have the power to establish temporary rules and regulations to ensure economy and efficiency in the several divisions of City government.

## ARTICLE 9

### FINANCE

#### SECTION 9.1 Fiscal Year

The fiscal year of the City shall begin July 1 and run through the subsequent June 30 in each year.

#### SECTION 9.2 Preparation of Budget

The preparation of the fiscal budget of the City shall begin at such time as specified by the Manager, or as directed by the Administrative Code. The chief officer or director of each department shall submit to the Manager an itemized estimate of the expenditures for the next fiscal year for the department or activities under the officer's control. In presenting the budget to the City Council, the Manager shall also include a detailed report of estimated revenues other than those to be derived from real estate taxes, paying particular attention to departments or activities that are self-sustaining.

### SECTION 9.3 Limitation on Budget Increases

(A) Recognizing that the final tax rates for the City of Derry are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35(1), all departments and agencies of the City of Derry and the Derry Cooperative School District, as well as any other organization receiving funds from the City, shall prepare their annual budget proposals, and the City Council shall act upon such proposals, in accordance with the mandates in this section.

In enacting a combined annual municipal budget for the next fiscal year, the City Council shall limit total appropriations so as not to exceed an amount equal to the combined annual budget of the current fiscal year, increased by a percentage factor equal to the average of the Consumer Price Index-Urban (CPU) of the 3 calendar years immediately preceding budget adoption, as published by the US Bureau of Labor Statistics, plus the Growth Index described in Subsection (B) of this Section. This provision shall not prevent the City Council from establishing a combined annual municipal budget below this limit.

This provision shall not prevent the City Council, from appropriately funding any programs or accounts mandated to be paid from municipal funds by State and federal law.

(B) Growth Index. A composite Growth Index for the City of Derry shall be computed using the following indicators:

1. 34% of the change in the daily public school attendance measured by the Average Daily Membership Resident (ADMR) data compiled by the NH Department of Education or its successor.

2. 33% of the change in the city's net assessed valuation (the unequalized taxable value used to calculate the local tax rate) due to new construction, exclusive of improvements to



previously assessed residential property of any type, as compiled by the Derry Tax Assessor's office or its successor.

3. 33% of the change in the city's average annual public and private wages, adjusted for inflation, as compiled by the New Hampshire Department of Employment Security or its successor.

The average change of each indicator shall be computed from data available for the 2 years most closely preceding budget adoption. A summation from all indicators resulting in negative value shall be considered as zero percent.

The Growth Index shall be added to the average change in the Consumer Price index-Urban (CPU) of section (A), in establishing a spending limit for the combined annual municipal budget for the next fiscal year.

#### SECTION 9.4 Exception to Budget Limitation

The total or any part of principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be exempted from the limitation established in Section 9.3(A) and (B) upon an affirmative vote of two-thirds of the members of the entire City Council. This decision shall be made annually.

In addition, capital expenditures deemed necessary by the City Council, may be exempt from the limitation defined in Section 9.3(A), upon an affirmative vote of two-thirds of the members of the entire City Council.

## SECTION 9.5 Reserve Fund

In any fiscal year, in the event actual property tax collections or other revenues exceed the budgeted expenditures appropriated in accordance with Section 9.3, plus additional expenditures authorized pursuant to Section 9.4, such surplus revenues shall be deposited in a reserve account specifically established for the purpose.

This account shall be available as a contingent revenue source in succeeding fiscal years, to offset budgeted appropriations which otherwise require funding from property taxes, or for any other proper municipal budget purpose, or to meet federal and State mandates or for unanticipated emergency expenses, or as a property tax credit, upon an affirmative vote of two-thirds of the members of the entire city council.

## SECTION 9.6 Deficit Budget Control

Actual annual municipal expenditures shall not incur a deficit, wherein total spending exceeds total revenue during the fiscal year. If the total actual and projected revenue from all sources, including property taxes, municipal, county, State and federal revenues, and amounts transferred from the reserve fund established pursuant to section 9.5, during the fiscal year fails to meet actual and projected expenditures for the remaining part of that fiscal year, an automatic, equal and immediate across-the-board percentage reduction in appropriations shall be instituted in the annual budget of every department and agency of the City, and the Derry Cooperative School District. The City Treasurer shall compare the amount of actual and projected revenue to actual and projected expenditures, and shall determine the requisite percentage reduction. Upon



notification by the City Treasurer, the City Council shall then order the reduction in appropriations.

This reduction may be omitted or reduced upon an affirmative vote of three-fourths of the members of the entire City Council.

This provision shall not prevent appropriate funding of any program or accounts mandated to be paid from municipal funds by State and federal law.

#### SECTION 9.7 Submission of Budget; Budget Message

(A) By April 1 the Manager shall submit to the Clerk of the City Council a proposed budget for the ensuing fiscal year which shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year, an accompanying budget message and supporting documents, including the estimated effect of the proposed budget on the tax rate. The manager shall include in the proposed budget, without change, the school budget proposed by the Derry Cooperative School District.

(B) The message of the Manager shall explain the budget for all City agencies both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, indicate any major changes from the current fiscal year in financial policies, expenditures and revenues, together with the reasons for such changes; summarize the City's debt position and include such other material as the Manager deems desirable or the City Council may reasonably require.

## SECTION 9.8 Action on the Budget

(A) Public Hearing. The City Council shall publish in one or more newspapers of general circulation in the City a general summary of the proposed budget as submitted by the Manager with a notice stating: (1) the times and places where copies of the proposed budget are available for inspection by the public and (2) the date, time and place not less than 2 weeks after such publication, when a public hearing on the proposed budget will be held by the City Council.

(B) Adoption. The City Council shall enact the budget, with or without amendments, by May 31. In amending the budget, it may delete, decrease, increase or add any programs or amounts, except it may not decrease expenditures required by law or for debt service, all subject to the provisions of Sections 9.3 and 9.4.

If the City Council fails to take action with respect to the budget by May 31, such budget shall, without any action by the City Council, be deemed to have been adopted, and shall be available for the purposes specified, provided it is in accordance with Section 9.3 and 9.4.

## SECTION 9.9 Quarterly Budget Reports

At the second meeting of each quarter of the fiscal year, and more often if required by the City Council, the Manager or designee shall submit to the City Council data showing the state of the City's financial affairs. The Manager shall, at the City Council's second regular meeting in the quarterly period, using the same data furnished to the City Council, provide a report to the public that shows the relation between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses.



#### SECTION 9.10 Appropriations After Adoption of Budget.

No appropriation shall be made for any purpose not included in the annual budget as adopted, unless approved by a two-thirds majority of all the members of the City Council after a public hearing. The City Council shall, by resolution, designate the source of any money so appropriated.

#### SECTION 9.11 Transfer of Appropriations

No expenditure shall be made, and no obligation for expenditure shall be incurred, except pursuant to a duly adopted appropriation or a transfer of appropriation permitted by this section.

(A) Intradepartmental Transfers. The Manager may approve a transfer of appropriations from one budgeted account to another budgeted account within a department, provided that the transfer or transfers do not exceed 10 percent of the appropriated budget for the department for the fiscal year, that funds are available to support the transfer and that the amount to be transferred is not essential for the effective operation of the account or accounts from which the transfer is to be made. In no event shall the amount of any such transfers exceed the total of \$10,000.00 in a single department without approval of the City Council.

(B) Interdepartmental Transfers. With the approval of the City Council, the Manager may transfer any unencumbered appropriation balance or any portion thereof from one department to another.

(C) The Manager shall furnish the council a quarterly report listing all transfers made during the quarter with copies available for public review.

(D) For the purpose of classifying transfers under this Section, the appropriations of a department shall be classified in accordance with the Detailed Function Code of the City's Classification of Accounts.

#### SECTION 9.12 Capital Improvements Plan

(A) The City Manager, after consultation with the Planning Board and School Board, shall prepare and submit to the City Council a capital improvements plan at least one month prior to the final date for submission of the budget. The capital improvements plan shall include:

1. A clear summary of its contents.
2. A list of all capital improvements including major replacements which are proposed to be undertaken during the next 6 fiscal years, including, but not limited to, equipment, sewer and water mains or facilities, roads, sidewalks, bicycle paths or lanes, public open spaces and recreation facilities, new police or fire stations, and other new public facilities and major items of equipment, with appropriate supporting information as to the necessity for such improvements.
3. Cost estimates, methods of financing and recommended time schedule for each improvement.
4. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

(B) The capital improvements plan shall be based on a period of not less than 6 years and shall be guided by the Master Plan for the City.



(C) The foregoing information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(D) The City Council, Planning Board and School Board shall meet annually in preparation for and review of the capital improvements plan in a manner determined from time to time by the City Council.

(E) A summary of the updated capital improvements plan with estimated costs shall be included in the City report and the current year costs of the capital improvements plan shall be included in the City budget.

(F) The City Council shall publish in one or more newspapers of general circulation in the City a general summary of the capital improvements plan and a notice stating: (1) the times and places where copies of the capital improvements plan are available for inspection by the public; and (2) the date, time and place not less than 2 weeks after such publication, when a public hearing on said plan will be held by the City Council.

(G) After the public hearing and on or before 60 days prior to the start of the ensuing fiscal year, the City Council shall by resolution adopt the capital improvements plan with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvements plan as submitted must clearly identify the method of financing proposed to accomplish the increase.

(H) Funding of all capital improvements is subject to the provisions of Sections 9.3 and 9.4.

#### SECTION 9.13 Lapse of Appropriations; Special Revenue Funds

Every appropriation, except an appropriation for a capital expenditure or dedicated funds permitted by State law, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation shall be deemed abandoned if 2 years pass without any disbursement from, or encumbrance of, the appropriation. Special Revenue Funds may be established in accordance with State law for a specific purpose only upon receiving a vote of two-thirds of all the members of the City Council.

#### SECTION 9.14 Purchasing Procedure

The Administrative Code shall establish purchasing and contract procedure, including the assignment of all responsibility for purchasing to the Manager or designee, and the combination purchasing of similar articles by separate departments. The City Council shall establish dollar limits for purchases and contracts which must be by competitive bid and shall establish the bidding procedures. No competitive bids shall be required when purchasing through the State of New Hampshire or at the State of New Hampshire bid prices. Requirements for bids may be waived in specific instances by a two-thirds vote of the City Council. The Council shall establish dollar amounts for purchases and contracts, over which no purchases shall be made or contracts entered into without the affirmative vote of a majority of the City Council. If the City Council has voted to make a purchase or enter into a contract, the Manager shall carry out the vote of the Council and enter into such transaction on behalf of the City.



#### SECTION 9.15 Special Assessments

When it appears either by petition or Council deliberation that the cost of a public improvement should be defrayed in part or whole by special assessment upon the property especially benefited, the City Council shall have authority to so declare by resolution. The City Council shall hold a public hearing prior to enacting any special assessment resolution. Such resolution shall state the estimated cost of the improvement, the proportion of the cost to be borne by special assessment and the proportion to be borne by City general revenues. The resolution shall designate the areas of the City or the premises on which the special assessment shall be levied and the conditions of payment of the levy. Adoption of the resolution shall require an affirmative vote of two-thirds of all the members of the City Council.

The City Council shall prescribe by ordinance, complete special assessment procedures concerning plans and specifications estimate of costs, notices, hearings and any other matters concerning the financing of improvements by the special assessment method.

#### SECTION 9.16 Fiscal Control

The Administrative Code shall establish procedures governing fiscal control of all City finances, including, but not limited to, a pre-audit of all authorized claims against the City before payment.

#### SECTION 9.17 Bonding of Officials

Any City officer or employee (other than City Councilor) may be required by the Manager to give a bond for the faithful performance of the duties of the office. The Manager and all

officers receiving or disbursing City funds shall be so bonded. All official bonds shall be corporate surety bonds, and the premiums thereon shall be paid by the City. Such bonds shall be filed with the City Clerk.

#### SECTION 9.18 Investments, Trust Funds

The Trustees of Trust Funds shall invest and account for funds under their supervision in accordance with State law.

#### SECTION 9.19 Grants, Gifts

The City Council may apply for, accept and expend moneys received from the State, Federal, or other governmental units, or from private sources which become available during the fiscal year. A procedure for accounting for such moneys shall be provided for in the Administrative Code. No City funds shall be expended as matching funds for such moneys unless lawfully appropriated for such purpose.

#### SECTION 9.20 City Treasurer

There shall be a Treasurer of the City, appointed by a majority of the entire City Council. The Treasurer shall have custody of all moneys belonging to the City and shall pay out the same only upon orders of the Manager and the Mayor or as otherwise authorized by State law. The Manager shall initiate and sign a document, to be co-signed by the Mayor or the Mayor's designee, listing payments to be made. The Manager shall attach to the document all supporting papers, as specified by the Administrative Code, authorizing the Treasurer to make payment.



The Treasurer shall deposit all moneys, invest excess funds and account for same as directed by this Charter, the Administrative Code, and State law. The Treasurer shall provide quarterly reports of all investments to the City Council. A vacancy in the office of the City Treasurer shall be filled by appointment by the City Council for the unexpired term.

#### SECTION 9.21 Borrowing Procedure

Subject to the applicable provisions of State law and the Administrative Code, the City Council, by resolution, may authorize the borrowing of money for any purpose within the scope of the powers vested in the City and the issuance of bonds of the City or other evidence of indebtedness therefor, and may pledge the full faith, credit and resources of the City for the payment of the obligation created.

#### SECTION 9.22 Independent Audit

Independent compliance and financial audits shall be made of all accounts of the City at least annually and more frequently if deemed necessary by the City Council. Such audits shall be conducted according to auditing procedures of the American Institute of Certified Public Accountants, the National Committee on Government Accounting, and other such procedures which may be necessary under the circumstances, by certified public accountants experienced in municipal accounting. Summaries of the results of such audits, including findings and recommendations and any management letters, shall be made public. At least once every 5 years the City Council shall change auditors.

### SECTION 9.23 Annual Report

An annual report of the City's business for the preceding year shall be made available to the public not later than 90 days after the close of the fiscal year and shall include reports from all organizations to which the City has provided funds. Such report, if not forthcoming from an organization so funded, shall cause that organization not to be funded in the ensuing year.

### SECTION 9.24 East Derry Fire Precinct - Exemption from Expenditures for Derry Fire Department.

So long as the East Derry Fire District remains in existence and is carrying out its objects, the budgeted direct appropriations for the Derry Fire Department shall not be included in the calculation of the municipal tax rate assessed on property within the Precinct. This section shall be of no further effect if and when the Precinct is dissolved in accordance with Section 11.6 of this Charter.

## ARTICLE 10

### GENERAL PROVISIONS

#### SECTION 10.1 Availability of City Records

In compliance with RSA 91-A, a copy of all ordinances, the Administrative Code or other rules and regulations adopted by any city agency, board or individual shall be filed in the office of the City Clerk and made available for review by any person requesting such information.



## SECTION 10.2 Liability of City Officers and Agencies

All city officers and members of city agencies shall be deemed to be public or municipal officers or officials. The City shall indemnify any such officer or member for expenses or damages incurred in the defense or settlement of a claim against the officer or member which arose while acting in good faith within the scope of official duties or employment, but only to the extent and subject to the limitations imposed by State law.

## SECTION 10.3 Prohibition

(A) No officer or employee of the City shall appear as counsel before any agency of the City of Derry.

(B) Any City officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in the transaction as a City officer or employee. Any City officer or employee who willfully conceals such interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit the office or position. In addition, the transaction shall be voidable by the City Council if the person contracting with or making a sale to the City has knowledge that this section has been violated.

### (C) Activities Prohibited

1. No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations.
2. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
3. No person who seeks appointment or promotion with respect to any City position or appointive City office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with any test, appointment, proposed appointment, promotion or proposed promotion.
4. No person who runs for City office shall solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatever from any person holding any compensated appointive City position.

### SECTION 10.4 Severability

If any provision of this Charter is held invalid, the other provisions of this Charter shall not be affected thereby. If the application of this Charter or any of its provisions to any person or circumstance is held invalid, the application of this Charter and its provisions to other persons and circumstances shall not be affected thereby.



## SECTION 10.5 Specific Provisions Shall Prevail

To the extent that any specific provision of this Charter conflicts with any provision expressed in this Charter in general terms, the specific provision shall prevail.

## SECTION 10.6 Procedures

(A) Meetings. All multiple member bodies of the City whether elected or appointed or otherwise constituted, shall meet regularly at such times and public places within the City as they may prescribe. Except in emergencies, special meetings of any multiple member body shall be held on the call of the respective chairperson or by one-third of the members thereof, by written notice delivered to the residence or place of business of each member at least 48 hours in advance of the time set. A copy of the said notice shall also be posted on the City bulletin board.

Special meetings of any multiple member body shall also be called within one week after the date of the filing with the City Clerk of a petition by at least 100 voters which states the purpose or purposes for which the meeting is to be called. Meetings of all multiple member bodies shall be open and public; however, a multiple member body may meet in a non-public session as permitted by RSA 91-A.

(B) Agenda. Except in cases of emergency, at least 48 hours before any meeting of a multiple member body is to be held, an agenda shall be posted containing all items which are scheduled to come before the meeting. No action taken on a matter not included in the posted agenda shall be effective unless the body first adopts by special vote a resolution declaring that an emergency exists and that the particular matter must be acted upon at that meeting for the immediate preservation of the peace, health, safety or convenience of the City

(C) Rules and Minutes. Each multiple member body shall determine its own rules and order of business unless otherwise provided by this Charter or by State law. The City Clerk or designee shall take and keep the minutes of the respective proceedings. Such rules and minutes, except as provided for in RSA 91-A, shall be a public record kept available in a place convenient to the public at all times, and certified copies shall be kept available in the City Clerk's office.

(D) Voting. Except on procedural matters, all votes of all multiple member bodies shall be taken by a call of the roll and the ayes and nays shall be recorded in the minutes, provided, however, that if the vote is unanimous, only that fact need be recorded.

(E) Quorum. A majority of the members of a multiple member body shall constitute a quorum, but a smaller number may adjourn from time to time and compel the attendance of the absent members in the manner and subject to the penalties prescribed by the rules of the body. No other action taken by a number of members smaller than the quorum shall be valid or binding.

#### SECTION 10.7 Duties of the Mayor

(A) The Mayor, in addition to other duties as provided for in this Charter, shall, after consulting with the Manager, prepare the agenda for presentation to the City Council.

(B) The Mayor shall meet with the Manager as often as they both shall deem necessary in order to ensure that the Manager and the City Council are in agreement as to decisions made, or to be made, and to share information that may be of benefit to the Mayor and the City Council regarding public relations, economic development plans, or other public matters the Council may request the Manager to pursue.



(C) The Mayor shall advise the City Council on a monthly basis as to activities and progress on matters assigned to the Mayor.

(D) As a member of the City Council, the Mayor shall be fully subject to the non-interference requirement of Section 8.7 of this Charter.

(E) In order to carry out the Mayor's responsibilities, the Mayor shall be furnished a desk, office space, and secretarial services as needed. Upon leaving office the Mayor shall immediately turn over all papers, files, or other matters to the duly elected successor.

#### SECTION 10.8 Definitions

Unless another meaning is clearly apparent from the manner in which the word is used, the following words as used in this Charter shall have the following meanings:

(A) Charter. The word "charter" shall mean this Charter and any amendments to it made through any of the methods provided under RSA 49-B.

(B) Days. The word "days" shall refer to calendar days.

(C) Emergency. The word "emergency" shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action.

(D) Initiative Measure. The words "initiative measure" shall mean a measure proposed by initiative procedures under this Charter, but excluding:

1. Matters relative to the organization or operation of the City Council;
2. An emergency measure passed in conformity with this Charter;
3. The City budget;
4. Tax anticipation notes;

5. An appropriation for the payment of the City debts or obligations;
6. Any appropriation of funds necessary to implement a duly adopted collective bargaining agreement;
7. Any proceeding, or part thereof, relating to the election, employment, appointment, suspension, transfer, demotion, removal or discharge of any City officer or employee;
8. Any proceeding repealing or rescinding a measure, or a part thereof, which is protested by referendum procedures:

(E) Majority Vote. Unless otherwise expressly provided, the words "majority vote" shall mean a majority of those present and voting with a quorum of the body present.

(F) Measure. The word "measure" refers to a specific act, or proposal. The specific act or proposal may be a resolution, an ordinance, a referendum vote to be taken, or other proposed action, depending on the matter to be acted on.

(G) Multiple Member Body. The words "multiple member body" shall mean any body consisting of two or more persons, whether elected, appointed, or otherwise constituted.

(H) Number and Gender. The singular number may be extended and applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender; and words imparting the feminine gender shall include the masculine gender.

(I) Referendum Measure. The words "referendum measure" shall mean:

1. a measure protested by referendum procedures under this Charter, including a specific item in the City budget, but excluding items 1 through 7 listed in the definition (D) Initiative Measures, or;



2. any proceeding of the City Council providing for the submission or referral of a matter to the voters at an election.

(J) City. The word "City" shall mean the "City of Derry."

(K) Agency. The words "City Agency" shall mean any board, commission, committee, department, or office of the City government.

(L) Voters. The word "voters" shall mean registered voters of the City of Derry.

#### SECTION 10.9 Terms of Appointed Officials and Board Members

The terms of all appointed officials and members of appointed boards shall begin on April 1 and end on March 31.

### ARTICLE 11

#### TRANSITIONAL PROVISIONS

##### SECTION 11.1 Continuation of Government

(A) All members of the Town government of the former Town of Derry, elected or appointed, except those abolished by this Charter, shall continue to perform their duties until the expiration of their current terms, or as such terms may be extended by this Section and until successors to their respective positions are duly appointed, elected and qualified, or their duties have been transferred. The Town Council shall take whatever measures are necessary to effectuate an orderly transition and shall take whatever actions are necessary to enable such transitions in office to comply with the provisions of this Charter.

(B) 1. The Town Council of the former Town of Derry is abolished as of the effective date of this Charter. City Councilors to serve under this Charter shall first be elected at a special election to be held on the Tuesday immediately following the second Monday in November 1996. District Councilors and the Councilor-at-large shall be elected for regular terms of office, and District Councilors-at-large shall be elected to special interim terms of 1 year, with all to take office on the first working day of January 1997.

2. The terms of officials elected under the former Charter of the Town of Derry to offices which continue to be elected under this Charter shall be extended through the end of the day preceding the first working day of January in the year following the date of expiration of the terms to which they were elected.

3. Offices which were elective under the former Charter of the Town of Derry but which have become appointive under this Charter shall be abolished as of the date the appointive office is filled in accordance with this Charter. If the term of any official holding such elective office will expire in the ordinary course prior to such date, the term shall be extended to such date.

(C) On the first working day of January 1997, the City Council shall elect a Mayor and a Vice Mayor, for terms of 1 year.

#### SECTION 11.2 Continuation and Compensation of Personnel

(A) Any person holding an office or position in the service of the former Town of Derry, or any person serving in the employment of the Town, shall retain such office or position and shall continue to perform the duties thereof unless or until provisions shall have been made in accordance with this Charter for the performance of such duties by another person or agency.



No person in the permanent full-time service of employment of the City shall forfeit pay grade or time in service by reason of such transfer. All such persons shall be retained in capacities as similar to their former capacities as is practical.

(B) The office of Town Administrator is abolished, and any prior agreement for employment of the Town Administrator, express or implied, shall terminate upon the effective date of this Charter. The City Council shall make provision for an acting City Manager, to serve until the first City Manager is selected under this Charter, subject to the limitation of Section 8.5.

### SECTION 11.3 Council Salaries

The salary to be paid each City Councilor shall not exceed \$2500.00 per annum. In addition to this sum, the Mayor shall receive an additional sum of \$1500.00. Such salaries shall continue until changed by the City Council pursuant to Section 5.8 of this Charter.

### SECTION 11.4 Transfer of Records and Property

As of the effective date of this Charter, all records, property and equipment of any City agency, the powers and duties of which are assigned in whole or part to another City agency, shall be transferred to the City agency to which such powers and duties are assigned.

### SECTION 11.5 Effective Date

This Charter shall take effect January 1, 1997, except as otherwise provided. Prior to that date, the Town Council shall prepare for transition to the form of government established by this Charter.



#### SECTION 11.6 Absorption of the East Derry Fire Precinct

If at any time the voters of East Derry Fire Precinct vote to dissolve the precinct, the functions, responsibilities and duties of the Precinct shall become the responsibilities of the City. All permanent full-time employees of said Precinct shall be transferred to the City fire service in capacities as similar to their former capacities as is practicable.

**For Reference  
Not to be taken  
from this library**



Derry Public Library

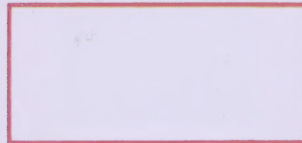


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Town of Derry Charter Commission :  
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